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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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# BEFORE THE BOARD OF PATENT APPEALS
## AND INTERFERENCES

Application Number: 10/618,369
Filing Date: July 10, 2003
Appellant(s): MCCANNE ET AL.

Malgorzata A. Kulczycka (Reg. No. 50,496)
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/03/2010 appealing from the Office action mailed

04/14/2010.

### (1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

### (2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings

which will directly affect or be directly affected by or have a bearing on the Board's decision in

the pending appeal.

### (3) Status of Claims

The statement of the status of claims contained in the brief is correct.

### (4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments

after final rejection contained in the brief.

### (5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in

the brief.

### (6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### (7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the

Appendix to the appellant's brief.

### (8) Evidence Relied Upon

5,793,962                          BADOVINATZ ET AL.          8-1998

### (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:


#### *Claim Rejections - 35 USC § 101*


35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.


**Claims 16 and 36** are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

Exemplary claim 16 is drawn towards "An apparatus for processing data...a data store

that stores...one or more processors comprising one or more sequences of instruction...to

perform logic that disseminates..." Examiner submits that the instant claim language (i.e. "an

apparatus" and "one or more processors") appear to be software processors/agents (i.e. software

to process something) in view of page 2, lines 31-page 3, line 8 of the instant specification.

Software per se is held to be non-statutory. Examiner notes that while Appellant' appears to

argue in Section VII of Appeal Brief filed 09/03/2010, that central processing unit (CPU) is

present, no where does Appellant disclose that the one or more processors in the instant claims

are the CPU's , but merely states that the Examiner fails to interpret such processors as CPU's of

the instant specification. Furthermore, Appellant merely state exemplifications of a computer

system "that *can be* a desktop computer, laptop....workstation, mainframe, etc." As such, a

person of ordinary skill in the art could reasonable interpret the one or more processors as a CPU

or a processing agent (i.e. hardware or software).


### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.


**Claims 16, 18-24, 26 and 28-39** are rejected under 35 U.S.C. 102(e) as being

anticipated by **Badovinatz et al (U.S. Patent No. 5,793,962).**


**As per claim 16**, Badovinatz discloses the invention substantially as claimed.

Badovinatz discloses an apparatus for processing data at a node in a data network, wherein the

data network connects a plurality of nodes and at least a portion of the plurality of the nodes

form a multicast group apparatus comprising: a data store that stores a plurality of entries

associated with the multicast group **(col. 6, lines 19-22, membership list stored in the memory**

**of the processing nodes),** wherein each entry comprises data to be transmitted from a

rendezvous point of the multicast group to members of the multicast group **(col. 6, lines 19-28,**

**where the rendezvous point is the group leader node);** logic that disseminates the plurality of

entries to members of the multicast group **(col. 6, lines 19-60, col. 7, lines 5-11 and 40-53);**

logic that receives, from a node that is not a member of the multicast group, a request to run a query against the entries stored in the data store, wherein the query specifies matching criteria; logic that runs the query against the entries in the data store **(col. 5, lines 63-col. 6, lines 9)**; logic that indicates that the apparatus has been designated as the rendezvous node in the multicast group, wherein designation as the rendezvous node indicates that the apparatus is to disseminate the plurality of entries to members of the multicast group **(col. 5, lines 39-55)**; and logic that disseminates one or more entries that satisfy the matching criteria to the node that is not a member of the multicast group **(col.6, lines 25-28 and col. 8, lines 29-45, where the member to join receives the membership list)**.

   **As per claim 18,** Badovinatz teaches apparatus further comprising logic that adds a first entry to the plurality of entries in the data store in response to a request from a first node to add the first entry **(col. 7, lines 38-53)**.

   **As per claim 19,** Badovinatz teaches an apparatus wherein the logic that adds a first entry to the plurality of entries further automatically disseminates the first entry to the plurality of the nodes that form the multicast group in response to the request from the first node to add the first entry to the plurality of entries **(col. 13, lines 25-31)**.

   **As per claim 20,** Badovinatz teaches an apparatus further comprising logic that deletes a first entry of the plurality of entries in the data store in response to a request from a first node to relinquish the first entry **(col. 14, lines 38-45)**.

   **As per claim 21,** Badovinatz teaches an apparatus further comprising logic indicates, to the plurality of the nodes that form the multicast group, that the first entry has been relinquished,

wherein the indication is in response to the request from the first node to relinquish the first entry
**(col. 14, lines 28-45)**.

   **As per claim 22,** Badovinatz teaches an apparatus wherein the source that published the
entry is not a member of the multicast group **(col. 6, lies 19-28, joining member)**.

   **As per claim 23,** Badovinatz teaches an apparatus wherein the source that published the
entry is a member of the multicast group **(col. 7, lines 41-53)**

   **As per claim 24,** Badovinatz teaches an apparatus wherein each entry is associated with
a priority that specifies its delivery priority relative to other entries **(col. 5, lines 56-62)**.

   **As per claim 26,** claim 26 is substantially the same as claim 1 and is thus rejected using
similar rationale.

   **As per claim 28-34,** claims 28-35 lists all the same elements of claims 18-24, but in
method form rather than apparatus form.  Therefore, the supporting rationale of the rejection to
claims 18-24 applies equally as well to claims 28-35.  Furthermore regarding, asynchronously
notifying the particular node of a modification to a first entry; wherein the asynchronously
notifying the particular node is performed in response to the source that published the first entry
modifying the first entry **(col. 7, lines 45-53)**.

   **As per claim 36,** claim 36 is substantially the same as claim 1 and is thus rejected for
reasons similar to those in rejecting claim 1.

   **As per claims 37-39,** Badovinatz teaches wherein the plurality of entries to members of
the multicast group comprises updates to data stores associated with nodes that are not members
of the multicast group**.**

## *CONCLUSION*

**THIS ACTION IS MADE FINAL.**  Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action.  In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.  In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joiya Cloud whose telephone number is 571-270-1146.  The examiner can normally be reached Monday to Friday from on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922.  The fax phone number for the organization where this application or proceeding is assigned is 571-273-3922.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.  Status information for published applications may be obtained from either Private PAIR or Public PAIR.  Status information for unpublished applications is available through Private PAIR only.  For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access

to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

(toll-free).

### (10) Response to Argument

A)      "Claim 16 particularly point out and distinctly claims the subject matter that the

Applicant regards as the invention".

As to the above point A), the rejection of claim 16 under U.S.C. 112 second paragraph

has been withdrawn.

B)      "Limitations recited in each of claims 16 and 36 are tied to a machine, as a

processor, recited in claims 16 and 36, is a machine.

As to the above point B), please refer to 35 U.S.C 101 rejection further detailed.

Accordingly, the rejection under 35 U.S.C 101 is maintainted.

C)      "Badovinatz INQUIRY request is not a request to run a query against the entries

in the data store, wherein the query specifies matching criteria, as claimed.

As to the above point C), Examiner respectfully disagrees.  Examiner submits that the

instant claim must be given their broadest reasonable interpretation from the perspective of a

person of ordinary skill in the art.  The instant claim only requires "a request to run a query

against the entries stored in the data store..." No specific claim language is recited defining

which entries, thus a person or ordinary skill in the art would reasonable interpret a query against

the data store to anticipate the instant claim language.  See where Badovinatz discloses in a

request (Figure 8, item 801 INQUIRY request to determine group leader)  for the group leader

having a matching criteria that upon comparison to the data store returns the matching group

leader of the processor group (col. 7, lines 20-28). Therefore, lacking any requirement in the

instant claim of an exact form of the entries or any particular criteria for matching, the INQUIRY

against the data of the data store can clearly meet these terms.

      D)     "Badovinatz INQUIRY is sent by a member of the multicast group, not by a node

that is not a member of the multicast groups, as claimed.

      As to the above point D), Examiner respectfully disagrees. Examiner submits that the

INQUIRY as disclosed by Badovinatz to determine the group leader, a request is made form the

name server for the identity of the group leader of a processor group, (See col. 7, lines 21-34).

The disclosure of Badovinatz specifically state that the *"name server can be a processing node*

*within the processor group or a processing node independent of the processor group."* (col. 6,

lines 40-42) Therefore, Badovinatz clearly discloses a request from a node (the name server,

700), that is not a member of the multicast group (processor group) (See Figure 7 and col. 7,

lines 21-34).

      E)     "Badovinatz fails to disclose "disseminating one or more entries that satisfy the

matching criteria to the node that is not a member of the multicast group," as claimed.

      As to the above point E), Examiner respectfully disagrees. The above argument appear to

rely on the infallibility of the arguments presented with respect to argument C) and thus replies

detailed in C) apply equally to Appellant's arguments with respect to point E). Furthermore, with

respect to the disseminating of the entries see where the matching identity of the group leader is

returned to the name server (the node that is not a member of the multicast group), col. 7, lines

24-30).

      **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joiya M. Cloud

November 17, 2010

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

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